

BEFORE THE DEPARTMENT OF REAL ESTATE

FILED

STATE OF CALIFORNIA

MAR 21 2019

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DEPARTMENT OF REAL ESTATE

By K. Knap

In the Matter of the Application of:

ALEXIS YVONNE JAMYNE SMITH,

Respondent.

} DRE No. H-6739 SAC

} OAH No. 2018110158

DECISION

The Proposed Decision dated February 22, 2019, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

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If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

APR 11 2019

This Decision shall become effective at 12 o'clock noon on _____.

IT IS SO ORDERED March 18, 2019

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

ALEXIS YVONNE JAMYNE SMITH,

Respondent.

Case No. H-6739 SAC

OAH No. 2018110158

PROPOSED DECISION

Administrative Law Judge Tiffany L. King, State of California, Office of Administrative Hearings, heard this matter on January 29, 2019, in Sacramento, California.

Kyle T. Jones, Counsel, represented complainant Tricia D. Parkhurst, Supervising Special Investigator, Department of Real Estate (Department).

Respondent Alexis Smith was present and represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on January 29, 2019.

FACTUAL FINDINGS

1. On January 11, 2018, respondent submitted an application to the Department for a real estate salesperson license. The application is pending and no license has been issued.

2. On October 12, 2018, complainant, in her official capacity, filed the Statement of Issues, which seeks to deny respondent's application for licensure based upon her criminal conviction history and failure to disclose her convictions on her application. Respondent timely filed a Notice of Defense and this hearing followed.

Criminal Convictions

3. On July 23, 2004, in the Alameda County Superior Court, Case No. 376499, respondent was convicted of violating Penal Code section 484, subdivision (a) (petty theft), a misdemeanor. Respondent was sentenced to probation for one year and ordered to perform

community service. Other terms of her sentencing and/or probation were not included in the record. The circumstances underlying the conviction occurred on June 24, 2004, when respondent stole clothing from a Macy's department store.

4. On July 30, 2007, in the Alameda County Superior Court, Case No. 83121, respondent was convicted of violating Vehicle Code section 125000, subdivision (a) (driving without a valid license), a misdemeanor. Respondent was sentenced to three years' probation and ordered to perform community service. Other terms of her sentencing and/or probation were not included in the record. The circumstances underlying the conviction are that respondent drove a vehicle at a time when her driver's license was suspended.

Failure to Disclose Convictions on Application

5. Respondent submitted her application for a real estate salesperson license on January 11, 2018. Question No. 23 on the application asked whether respondent had "ever been convicted . . . of any violation of the law at the misdemeanor or felony level," and, if answered affirmatively, requested disclosure of any such convictions. The application also contained the following instructions: (1) "convicted" as used in Question 23 includes "[a]ll state . . . or federal misdemeanor and felony convictions"; and, (2) "[c]onvictions must be disclosed no matter how long ago they occurred. . . ." Respondent answered "No" to Question No. 23, and did not disclose her 2004 or 2007 misdemeanor convictions on her application.

Factors in Aggravation, Mitigation, or Rehabilitation

6. Respondent explained that she was "young and dumb" as a young adult, and made several bad choices. She abused drugs and alcohol. She also sold drugs to support herself. In 2004, respondent was 18 years old and homeless. She stole clothing from Macy's so she would have something to wear. Her young cousin was with her, and looked up to respondent as a role model. Respondent was embarrassed and admitted she "set a horrible example." Regarding her second conviction, respondent admitted she knowingly drove a vehicle while her driver's license was suspended. She was not financially stable at the time, and needed to get to work.

7. At age 21, respondent moved to Sacramento. She enrolled in Master's Commission Sacramento, a one-year disciple internship program at Capital Christian Center. Respondent "didn't want to sell drugs anymore [or] be an alcoholic" and hoped the program would help her become a "successful adult." When she first started, respondent hated the highly-structured nature of the program. Over time, she came to love it and the relationship she built with God. Respondent decided to remain in the program for a second year. By her third year, Capital Christian Center hired her to work in its outreach program.

8. In 2010, respondent and a friend started a non-profit organization, Be Change, an afterschool running program for inner city children. Respondent began working with students at Oak Ridge Elementary and was given an office to use on campus. She soon

realized that many students did not have sufficient food or clothing. Respondent identified with these children, as they reminded her of her childhood in Oakland. She began soliciting food banks and organized a group of mothers to prepare sack lunches for students to take home every other Friday. Respondent "fell in love" with the process of helping others. She remains in contact with several of the students, now adults, who participated in her program.

9. In 2017, respondent collected toiletries donated from local hotels and other donations from her neighborhood. For the last two Thanksgivings, she has passed out coffee, pie, and winter care packages (scarf, beanie, and personal toiletries) to the homeless in downtown Sacramento and Folsom.

10. For the last nine years, respondent has been employed in the financial services sector as a skip tracer, and has had access to, and is trusted with, highly sensitive consumer information. She was initially hired as an entry-level customer service representative for Primeritus Financial Services. After four months, she promoted to investigator and skip tracer and was responsible for overseeing the location and recovery of more than one million dollars in financial assets each month. In 2013 or 2014, respondent was hired by PRA Location Services, a company owned and started by her former boss. She worked there until January 2018, when she was hired by her current employer, Profound Recovery Solutions.

11. Respondent attended Folsom Lake College for one semester in 2016, taking courses in ballet, yoga, Spanish, and math. She has also completed some courses at Capital Bible College.

12. Respondent has not used illicit drugs since 2006. While in the disciple program, she brought her alcohol consumption "under control." She last consumed alcohol approximately seven years ago.

13. At hearing, respondent was contrite and apologetic for her past criminal conduct. She was "ashamed" of who she was as a young adult. Respondent has not had any arrests or convictions since her 2007 conviction. She currently owes money to the Internal Revenue Service, but makes monthly payments pursuant to an approved payment plan.

14. Respondent is now 33 years old. She is single and has no children. However, she provides financial support for her eight-year old niece, who sometimes stays with her.

15. Respondent is seeking a salesperson license because she wants to help others. Also, her mother was a real estate agent, and respondent wants to make her proud. Over the past year, she has been mentored by real estate agent, Ahrash Zamanian, helping with open houses and observing how he interacts with clients. Were respondent to be granted a license, she intends to work primarily in residential sales.

16. Respondent took full responsibility for failing to disclose her convictions on her license application. She explained that she had forgotten about the 2004 conviction, and

that she did not realize the 2007 conviction for driving without a license was a misdemeanor. She recognized she made a "huge mistake" and that there is no excuse for her nondisclosure.

17. Respondent submitted three character letters in support of her application. These letters were received into evidence and considered to the extent permitted by Government Code section 11513, subdivision (d).¹

- a. Ahrash Zamanian has known respondent for several years, and has served as her real estate mentor for the past year. Mr. Zamanian described respondent as "tenacious in all activities, eager to learn . . . honest, and trustworthy." He praised her efforts to help her community, including working with inner city children, and feeding and providing care packages to the homeless. Mr. Zamanian is aware of respondent's criminal history, but noted that she readily discusses her past mistakes with friends, family, and young people. He asserted that respondent has "great potential" in a real estate career and "wholeheartedly" recommended her for licensure.
- b. John Fountaine has known respondent for many years, and was her supervisor at Primeritus Financial Services and later, PRA Location Services. Mr. Fountaine extolled respondent's hard work and tenacity, describing her as "highly self-motivated and well capable of achieving any goal she sets her mind to." He further noted that respondent is a quick learner. While acknowledging that respondent "had challenges before her 21st birthday," Mr. Fountain asserted that respondent demonstrated "the highest level of integrity and regulatory compliance" in her position, where she handled sensitive, private consumer information and valuable client portfolios.
- c. Jason Harper is the founder of Alliance for Compassion and Education Development (ACED). He has known respondent for more than a decade. They first met when respondent joined Master's Commission Sacramento, where Mr. Harper was pastor. He has worked alongside respondent for the past several years, and has "a distinct understanding of [the] background and missteps of her younger days." He described respondent as consistent, compassionate, and "character driven in her life and in her career," and noted she is "the type of woman that I would want to raise my children if I were unavailable."

¹ Subdivision (d) states: "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration."

Discussion

18. The Department has developed criteria for use in evaluating the rehabilitation of a licensee, which are set forth in California Code of Regulations, title 10, section 2911, subdivision (a). These criteria include: the passage of at least two years from the most recent substantially related conviction, which time period may be increased depending on the nature and severity of the crimes committed; payment of restitution, fines and fees; expungement of the conviction; completion of or early discharge from probation/parole; abstinence from use of controlled substances or alcohol; stability of family life and fulfillment of parental responsibilities post-conviction; enrollment in educational or training courses; significant and conscientious involvement in community programs, church, or privately-sponsored programs to benefit society; new and different social relationships; and any change in attitude from that which existed at the time of the conduct in question.

19. When applying these criteria, it is evident that respondent has substantially rehabilitated from her past failings. Her misdemeanor convictions are more than 10 years old. She is no longer on criminal probation. She has made considerable effort over the past decade to better herself, including getting sober and maintaining gainful employment. Her considerable charity and involvement in her community are impressive and commendable. She is not the same troubled youth she once was. Her work with her church, children, and the homeless more than demonstrates her complete change in attitude and outlook on life.

20. The purpose of an administrative proceeding relating to licensing is to protect the public, and not to punish the licensee or applicant. (See *Fahmy v. Medical Bd. of Ca.* (1995) 38 Cal.App.4th 810, 817.) The Department must be assured that an individual it licenses possesses good judgment and integrity. Rehabilitation is a "state of mind" and the law looks favorably upon those who have achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Respondent's testimony was candid, persuasive, and credible. She accepted responsibility for her past actions, and demonstrated significant and substantial rehabilitation. Her testimony regarding her failure to disclose her convictions on her application was credible, and evidenced she had no intent to deceive. When all the evidence is considered, respondent has demonstrated that it would be consistent with the public interest, safety, and welfare to issue her a restricted real estate salesperson license.

LEGAL CONCLUSIONS

1. Respondent bears the burden of proving that she meets all prerequisites necessary for the requested license. (*Martin v. Alcoholic Beverage Control Appeals Board* (1959) 52 Cal.2d 238.) Rehabilitation is akin to an affirmative defense; therefore, the burden of proof of establishing an affirmative defense of rehabilitation is on the proponent of that defense. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.) Except as otherwise provided by law, the standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

2. An application for a real estate license may be denied if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 480, subd. (a)(1), and 10177, subd. (b).) The Department has set forth criteria to determine whether a conviction is substantially related to the qualifications, functions or duties of a licensee. California Code of Regulations, title 10, section 2910, subdivision (a)(8), provides that a conviction will be deemed to be substantially related if it evidences "[d]oing of any wrongful act with the intent of conferring a financial or economic benefit upon the perpetrator"

3. As set forth in Findings 3 and 4, respondent has two misdemeanor convictions for petty theft and driving without a license. Such crimes are deemed to be substantially related to the qualifications, functions, and duties of a real estate licensee. (See, Cal. Code Regs., tit. 10 § 2910, subd. (a)(8).) Cause therefore exists to deny respondent's application pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b).

4. An application for real estate licensure may be denied if the applicant engaged in conduct involving dishonesty, fraud, or deceit. (Bus. & Prof. Code, §§ 480, subd. (a)(2), and 10177, subd. (j).) As set forth in Finding 3, respondent was convicted of petty theft, conduct which involves deceit and dishonesty. Accordingly, cause exists to deny her application pursuant to Business and Professions Code sections 480, subdivision (a)(2), and 10177, subdivision (j).

5. An application for a real estate license may be denied if the applicant knowingly made a false statement of fact required to be revealed in her application. (Bus. & Prof. Code, § 480, subd. (d).) As set forth in Finding 5, respondent made a false statement of fact on her application when she failed to disclose her 2004 and 2007 misdemeanor convictions. Cause therefore exists to deny respondent's application pursuant to Business and Professions Code section 480, subdivision (d).

6. An application for a real estate license may be denied if the applicant "procured, or attempted to procure, a real estate license . . . by fraud, misrepresentation, or deceit" (Bus. & Prof. Code, § 10177, subd. (a).) Respondent's failure to disclose her 2004 and 2007 convictions constituted such conduct. Cause therefore exists to deny respondent's application pursuant to Business and Professions Code section 10177, subdivision (a).

7. When all the evidence is considered, respondent established that she has been sufficiently rehabilitated to justify issuing her a restricted real estate salesperson license at this time.

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ORDER

Respondent Alexis Smith's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to the respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

2. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

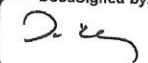
(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

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4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two (2) years have elapsed from the date of issuance of the restricted license to respondent.

DATED: February 22, 2019

DocuSigned by:

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TIFFANY L. KING
Administrative Law Judge
Office of Administrative Hearings

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Department of Real Estate

FEB 26 2019

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